

APPLICANT:
Eva Sue Nichols and Dewey Nichols

REQUEST: A Special Exception to allow
a Personal Care Boarding Home in the
R1 District

HEARING DATE: October 6, 2004

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5441

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Eva Sue Nichols and Dewey Nichols

LOCATION: 1111-B Hanson Road, Edgewood
Tax Map: 65 / Grid: 3D / Parcel: 365
First Election District

ZONING: R1 / Urban Residential

REQUEST: A Special Exception pursuant to Section 267-53F(8) of the Harford
County Code to allow a Personal Care Boarding Home in an R1 District.

TESTIMONY AND EVIDENCE OF RECORD:

Eva Sue Nichols, Co-Applicant, first testified. Mrs. Nichols stated that she and her husband wish to convert an existing single family brick rancher, located on Hanson Road, to an assisted living facility for up to five (5) individuals. Mrs. Nichols explained that the brick rancher, which to all appearances is a single family home, contains three (3) bedrooms and two (2) bathrooms, and is suitable to be used for such a facility. The house was purchased by her and her husband a few years ago, and adjoins an existing assisted living facility which Mr. and Mrs. Nichols have owned and operated for over twenty (20) years.

Mrs. Nichols testified that she was aware of all County and State licensing requirements by virtue of her having been in the business. She feels that she and her husband would be able to fully conform the proposed facility to all such regulations.

She does not feel that the facility would have any adverse impact on the neighborhood. The property fronts on Hanson Road. Mrs. Nichols and her family own virtually all of the property surrounding the subject property. Mr. and Mrs. Smith, who also own and operate an assisted living facility, are also adjacent neighbors. Mrs. Nichols indicated that on site parking is available for six (6) vehicles. She has no intention of changing the appearance of the home; it will continue to retain its residential appearance.

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For the Harford County Department of Planning and Zoning testified Dennis Sigler. Mr. Sigler indicated that the proposal complies with all applicable County Regulations. The proposed density does not exceed allowable density. Mr. Sigler also stated that the Applicants have long maintained a “beautiful” facility, which has not presented any problems to the County. Mr. Sigler further indicated that there is a need for this type of use and the proposal should have no impact to the surrounding neighbors or neighborhood.

A review of the Harford County Department of Planning and Zoning Staff Report further indicates that all applicable Zoning Regulations should be met, and that there is no suggestion of an adverse impact on the neighborhood.

No testimony or evidence was presented in opposition.

APPLICABLE LAW:

Section 267-51 of the Harford County Code states as follows:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

The Applicants are requesting a special exception to Section 267-53F(8) of the Harford County Code which states:

“Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:

- (a) The proposed use shall be located in a single-family detached dwelling.
- (b) The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.
- (c) A maximum density of one (1) boarded per two thousand (2,000) square feet of lot area shall be maintained.
- (d) Adequate off-street parking shall be provided.
- (e) Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.”

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Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this as all other similar requests.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants, who are long experienced in the personal care boarding home business, are proposing to convert a single family brick rancher, which fronts upon Hanson Road, to a personal care boarding home housing up to five (5) individuals. There is no plan to change the outward appearance or structure of the facility. The change in use of the brick rancher should, accordingly, be one which should be little noticed. Furthermore, the proposed facility lies immediately adjacent to two other assisted living facilities, one of which has been operated for many years, apparently without problem or complaint, by the Applicants. It is accordingly found that the proposed use is one which should have no adverse impact upon the neighborhood.

This special exception, as all special exceptions, is presumed to be a permitted use in its particular zoning district unless there is persuasive evidence produced that its negative impact on the neighborhood would be more pronounced at the particular location proposed than at some other location. As indicated above, there is absolutely no evidence that the proposed special exception would have any negative impact, let alone a negative impact more pronounced here than at some other location in the zone. It would be fully compatible with other uses permitted as a right in this particular zoning district. The special exception request, accordingly, meets the general requirements of Section 267-51 of the Harford County Zoning Code.

However, one must then turn to the particular provisions which are applicable to this special exception, and which are contained at Section 267-53F(8), as follows:

“Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:

- (a) The proposed use shall be located in a single-family detached dwelling.

The existing dwelling is a single family brick rancher.

- (b) The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.

The district in which the proposed facility is located, R1/Urban Residential, provides for a minimum lot size of 20,000 square feet. The subject property is over two acres in size.¹

¹ There was an indication that the lot may be re-subdivided to 1.04 acres in size. That re-subdivision, if it occurs, will not affect this decision, as the Applicant would remain fully in compliance with all applicable regulations.

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- (c) A maximum density of one (1) boarded per two thousand (2,000) square feet of lot area shall be maintained.

The Applicants are proposing to house a total of five (5) boarders, which only requires, at most, 10,000 square feet of lot area. The Applicants accordingly fully meet this requirement.

- (d) Adequate off-street parking shall be provided.

Adequate off-street parking shall be provided. Testimony of record was that the Applicants will provide six (6) parking spaces. A minimum of three (3) are required, in addition to parking for the residents of the dwelling. The Applicants, accordingly, appear to be able to fully meet this requirement.

- (e) Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.”

This is not a new dwelling.

Accordingly, it is found the Applicants are fully able to meet the specific requirements of Section 267-53F(8).

In addition to meeting the specific applicable regulations for a special exception, the Applicant must also fully be able to comply with the general requirements of Section 267-9I, Limitations, Guides and Standards, as follows:

Section 267-9I:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.

There was no testimony or evidence submitted that the proposed use would have any impact on the number of persons living or working in the area.

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- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

The subject property fronts upon Hanson Road, and will be accessed by Hanson Road. Hanson Road is a County road with a functional classification of collector/urban road. There should be no impact on traffic upon Hanson Road by the proposed use, which will generate a fairly insignificant amount of additional traffic.

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

There is no indication that the proposed use would have any impact on the orderly growth of the neighborhood or community. The proposed facility is similar to at least two (2) other facilities which immediately adjoin it. Accordingly, the use should have no impact on the orderly growth of the neighborhood or community. It would further have no adverse fiscal impact on the County.

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

The proposed use should generate no such adverse characteristic.

- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

The subject property will be serviced by public water and sewer. Local and state police agencies, and local fire department, are available to protect the subject property. There is no indication that the proposed use, which must comply with fairly rigorous state licensing requirements, would present any problem to police or fire companies.

- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

The proposal is consistent with accepted planning principals and practices.

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

The proposed use would have no impact on such facilities.

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- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

The proposed project is consistent with the Harford County Master Plan.

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

There would be no adverse impact on any surrounding natural features.

- (10) The preservation of cultural and historic landmarks.

There are no cultural or historic landmarks identified that would be impacted by the proposed project.

It is accordingly found that the use fully complies with all specific provisions related to this special exception; it fully complies with the general provisions of the special exception provisions of the Harford County Zoning Code; and it fully complies with the Limitations, Guides and Standards of Section 267-9I.

CONCLUSION:

It is accordingly recommended that the proposed special exception be granted, subject to the following conditions:

1. The Applicants shall submit a detailed site plan to be reviewed and approved through the Development Advisory Committee.
2. The Applicants shall obtain all necessary permits and inspections for the use.
3. There shall be no more than five (5) residents housed at this location. Any increase beyond this number shall be subject to further Board of Appeals hearing and review.

Date: November 3, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner